

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ZINO DAVIDOFF SA,

Plaintiff,

v.

06 Civ. 15332 (KMK)

CVS CORPORATION,

Defendant.

**SUPPLEMENTAL DECLARATION OF GUIDO BAUMGARTNER IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Guido Baumgartner, hereby declare as follows:

1. I am an attorney licensed to practice in Germany and am Director of Global Brand Protection at Coty Prestige Lancaster Group GmbH in Mainz, Germany. I submit this supplemental declaration based upon my own personal knowledge in support of the motion by Zino Davidoff SA (“Zino Davidoff”) for a preliminary injunction and as a supplement to a declaration, dated December 20, 2006 that I previously submitted in this action. As in the Amended Complaint, Coty Prestige is used herein to refer to Coty Inc. and its affiliates, including Lancaster BV, which is the exclusive fragrance licensee of Zino Davidoff.

The Unique Production Code Is An Extremely Important Tool For Zino Davidoff

2. As I previously stated in my December 20, 2006 declaration, Coty Prestige produces authentic DAVIDOFF COOL WATER fragrances for world-wide distribution at its factory in Chartres, France. Coty Prestige marks units of men's and certain units of women's DAVIDOFF COOL WATER eau de toilette, as well as its outer packaging, with a unique code (the “Production Code”) at the time of production. The Production Code is a numeric reference, which provides full traceability for the product unit on which it is placed. Those DAVIDOFF

products that are not marked with a Production Code are marked with a numeric code that identifies the batch in which they were made (the “Batch Code”). Each Production Code and Batch Code is registered at Coty Prestige’s factories, which allows us to trace a finished product (either by unit or by batch) from the time it leaves our factories through the distribution channels to our customers.

3. The Production Code is placed on the bottom of the bottom of the bottle of DAVIDOFF COOL WATER eau de toilette, except where the bottom of the bottle does not so allow, the Production Code is then placed on the neck or lower back of the bottle as seen on the women’s DAVIDOFF COOL WATER women’s eau de toilette, specifically, the 1.0, 1.7 and 3.4 oz. varieties. The Production Code is also placed on the bottom of the box under the Universal Product Code (“UPC”). Annexed hereto as Exhibit 1 is a true and correct copy of a PowerPoint presentation describing the technical aspects of the Production Code system.

4. The Production Code system was expensive to implement, and it continues to be an expensive process to affix unique Production Codes to DAVIDOFF COOL WATER products. For example, in 2006 alone, we spent approximately \$315,000 to affix the unique Production Code to DAVIDOFF COOL WATER men’s eau de toilette. Due to this considerable expense, it is necessary for us to make a business judgment to determine which products we will use the Production Code on, as opposed to our other Batch Code system. In making this decision, we take certain factors into account, such as whether the fragrance product is a prestige fragrance and how frequently the product is counterfeited. However, for certain fragrance products, such as the DAVIDOFF prestige line, we believe the increased cost of the unique Production Code system is well worth the greater expense because of the many benefits provided by the Production Code system.

5. The Production Code is an important part of our programs regarding: (i) anti-counterfeiting; (ii) worldwide quality assurance; and (iii) theft protection, investigation and prosecution.

**The Production Code System Is A Key Building Block
Of Our Anti-Counterfeiting Strategy**

6. Counterfeiting of fragrance products has become a worldwide problem and in order to protect consumers and their brands, brand owners must develop effective anti-counterfeiting strategies. This is especially true where counterfeit products, such as counterfeit fragrances, pose a significant health and safety risk to the public. The cornerstone of any anti-counterfeiting program is the brand owner's ability to differentiate an authentic product from a counterfeit quickly and easily – and to train investigators, Customs officials and law enforcement authorities to spot the fakes.

7. Unique numbering systems like our Production Code do just that. Other industries, such as the pharmaceutical industry, recognize the benefits of similar unique coding systems. For instance, the Head of the Vulnerability Assessment Team at Los Alamos National Laboratory has endorsed as an effective anti-counterfeiting measure a system to apply unique numeric codes to pharmaceutical products, allowing for visual comparison between products using the unique numeric code to determine counterfeits, as an effective anti-counterfeiting measure. Annexed hereto as Exhibit 2 is a copy of a report by Roger G. Johnston, Ph.D., CPP entitled *An Anti-Counterfeiting Strategy Using Numeric Tokens*.

8. I have been intimately involved with our Production Code system since its inception, and I have seen the extremely beneficial effects it has had in our efforts to stem counterfeits. Coty Prestige maintains a database that includes data on each unit (or batch, depending on whether the Production Code is used on that line of products) of DAVIDOFF

product. For products on which the Production Code or Batch Code is affixed, this data incorporates information about the product throughout its life cycle, including but not limited to the production date, what production line it was created on, what factory it was created in, what warehouse it is stored in and to what retailer it was shipped and on what date. In addition to information on genuine DAVIDOFF products, this database also contains every bogus Production Code used on counterfeit products we have discovered through our anti-counterfeiting efforts, as well as the date of purchase/seizure of the counterfeit DAVIDOFF products and the distributor or producer of the counterfeit DAVIDOFF products, if such can be determined.

9. When we enter a Production Code for a genuine product into the database, the program displays information regarding that product. When we enter a Production Code that has previously appeared on known counterfeit products into the database, the database flags this fact and provides the additional information discussed above. The database will also disclose whether a Production Code is fabricated, which provides us with another way to identify suspect products, even if it is the first time that the new code has been seen.

10. This system not only enables Coty Prestige and Zino Davidoff to identify counterfeit products more easily but also permits us to build our knowledge base regarding sources and distributors of counterfeit DAVIDOFF products and the movement of counterfeit product through commerce.

11. In our experience, counterfeiters do not incur the expense of applying unique codes, so counterfeit DAVIDOFF products typically either have no code or display a repeated code, such as 0173289680. Where the Production Code is not unique, this is a telltale sign that the products are counterfeit. For example, the investigator who first discovered the most recent

batch of counterfeit DAVIDOFF COOL WATER products sold at CVS pharmacies made this discovery based on the fact that he found a bogus Production Code (0173289680) that had previously appeared on other counterfeit DAVIDOFF products. In fact, as I stated in my original declaration, one of the bogus Production Codes on the CVS products (0707283148) has actually been found before at CVS.

12. Another good example occurred recently in Poland in March 2007. Polish Customs officials detained thousands of units of what they deemed to be possible counterfeits of our fragrance products, including DAVIDOFF COOL WATER. The Customs officials took digital pictures of the detained units, including the Production Codes where possible, and forwarded them to us by e-mail. Based on the Production Codes we were able to determine that the units were counterfeit, as the identical Production Code was used and was obviously fabricated.

13. Zino Davidoff and Coty Prestige proactively disseminate information to parties such as CVS and others suspected of selling counterfeit products regarding our unique Production Code and system and how to use it in order to detect counterfeits. We believe that we significantly enhance our ability to obtain meaningful injunctive relief or voluntary compliance from those we suspect of selling counterfeits when we can provide them with the means to identify counterfeits.

The Production Code System Is A Cornerstone Of Our Anti-Theft Strategy

14. As a prestige fragrance line, DAVIDOFF products, including DAVIDOFF COOL WATER, are a tempting target for thieves, and we are continually battling the theft of DAVIDOFF fragrance products in the production and distribution of our products. Using unique Production Codes on DAVIDOFF products helps us to address this problem by allowing us to employ the full traceability feature and determine the legitimacy of possibly stolen DAVIDOFF

fragrance products found by our investigators or law enforcement officers. The Production Code also makes it possible to determine at what point in the production/distribution chains and from what location the product disappeared.

15. This information greatly increases our chances of finding and taking action against the thieves, and possibly the distributors and retailers of the stolen DAVIDOFF fragrance products. It also helps us to determine if the location from which the products were stolen was the setting for other thefts of fragrance product.

16. For example, in or around mid-2005 our investigators began purchasing suspected stolen DAVIDOFF fragrance products through the Internet and flea markets in Germany. By using the Production Code, we traced these products and determined that many had been stolen from our European central logistics center in Wiesbaden-Nordenstadt, Germany. Through our investigation, we eventually ascertained that some of the thieves were warehouse employees. We continued our investigation in conjunction with the police, and eventually brought down the entire theft ring.

CVS's Sale of Decoded Gray Market DAVIDOFF Products Is Causing Zino Davidoff Severe And Irreparable Harm

17. Based on our inspection of CVS's warehouses pursuant to the Court's Order of December 22, 2006, we discovered that CVS is selling gray market DAVIDOFF COOL WATER products that have the Production Code removed as well as counterfeit products. Zino Davidoff faces severe and irreparable harm if the Court does not enjoin CVS from selling decoded DAVIDOFF products. CVS's sale of gray market DAVIDOFF COOL WATER fragrances has taken the quality of DAVIDOFF fragrance products out of our hands, disrupting our anti-counterfeiting, quality assurance and anti-theft programs and created an unacceptable

risk to the public health and safety and consequent reputational damage to the DAVIDOFF fragrance brand.

18. Further, as stated in Paragraph 11 above, we have found that some counterfeit DAVIDOFF products do not have any Production Code. It is extremely hard to differentiate between a counterfeit unit lacking a Production Code and a decoded gray market product. The only way to do so would be to use laboratory testing and/or detailed visual inspections of each questionable unit, and both are much more expensive and time-consuming measures than the determination permitted using the Production Code. It is also possible that someone in the distribution chain could decode a counterfeit product bearing a bogus Production Code. In other words, a decoded product could be a counterfeit product.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: Mainz, Germany
April 5, 2007



Guido Baumgartner